IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1789 OF 1999

Shri Lilachand Navalmal shah
Proprietor of Shiva Parvati Chitra
Mandir, Islampur, Tal. Walva,
District Sangli. ...Petitioner

V/s

1. The District Collector, Sangli

2. The State of Maharashtra .. Respondents.

Shri Bhushan A. Walimbe for the petitioner.

Shri C.R. Sonawane, AGP for respodnents.

CORAM : B.H. MARLAPALLE &
J.H. BHATIA, JJ.

RESERVED ON : 7TH NOVEMBER, 2006.
PRONOUNCED ON: 15TH NOVEMBER, 2006.

JUDGMENT (PER J.H. BHATIA, J.)

. The petitioner, by this writ petition, seeks to quash and set aside the order passed by the Collector, Sangli giving directions to pay amount of Rs.2,12,794/- towards entertainment duty on unutilised amount of service charges collected during the years 1992-93, 1993-94 and 1994-95.

2. The facts leading to this petition may be stated in brief as under:-

. The petitioner runs a Cinema Theatre in the name and style as " Shiva Parvati Chitra Mandir" at Islampur, Taluka Walva, District Sangli. Prior to December, 1992 the entertainment duty used to be 50% of the value of the tickets fixed by the exhibitor. Out of the said fixed value of the tickets, the owner of the theatre was expected to look after the maintenance of the theatre and to provide all the facilities. However, on 25th December, 1992 the Governor of Maharashtra promulgated Bombay Entertainment Duty (Amendment) Ordinance, 1992. Under the newly added proviso to clause (b) of Section 2 of the Bombay Entertainment Duty Act, 1923 (Principal Act) the proprietor of the theatre was allowed to charge 50 paise per ticket over and above the fixed value of the tickets and the entertainment duty. This amount of 50 paise was in the form of service charges to be spent towards maintenance and providing facilities and safety measures in the Cinema Theatre. The said Ordinance was thereafter replaced by the Bombay Entertainment (Amendment) Act, 1993 and it was also made effective from 25th December, 1992. As per this amendment, the

petitioner admittedly, collected the amount of Rs. 40,853.50 during the year 1992-93, an amount of Rs. 1,66,140.50 during the year 1993-94 and an amount of Rs. 2,51,372.50 during the year 1994-95. Thus, during these three years an aggregate amount of Rs. 4,58,366.50 was collected towards service charges. On 8/7/1997 Respondent No.1, Collector issued an order to the effect that as the said amount was not utilised for the purpose for which it was collected during the respective years, it will have to be added in the total amount of tickets and entertainment duty will have to be paid. The Collector issued notices dated 20th February, 1992 and 12th February, 1999 to the petitioner demanding amount of Rs.2,12,794/- as entertainment duty on the said amount and also informed that if the said amount is not paid Cinema licence would not be renewed in pursuance of the order dated 8/7/1997. The objections raised by the petitioner were turned down. Therefore, he has challenged the said order by this petition.

3. On behalf of the respondents affidavit-in-reply has been filed by Adinath Ganpat Vasudeo, Tahsildar, wherein he justified the demand on the ground that it was necessary to utilise the amount of service charges

during the same year in which it was collected. He however, clarified that the Accountant General had fixed the liability of payment of entertainment tax at Rs. 1,20,035/- which has been already paid under protest by the petitioner and thus, he had cleared the liability of payment of entertainment tax upto the financial year 1994-95.

4. According to the petitioner the amount paid by him under protest is liable to be refunded because such entertainment duty could not be imposed merely because the amount was not utilised during the respective years as there was no such provision in law.

5. Heard Shri Walimbe, the learned Counsel for the petitioner and Mr. Sonawane, the learned AGP for the respondents and perused the relevant documents.

6. There is no dispute that prior to 25th December, 1992 the theatre owner was expected to meet expenses of maintenance etc. for the theatre out of the fixed value of the tickets. The Government found that this was not sufficient to give boost to proper maintenance and safety measures and to give better facilities to the

customers. The Government of Maharashtra, therefore, came up with the amendment in Section 2 of the Bombay Entertainment Duty Act and as stated earlier by the Ordinance dated 25th December, 1992 and lateron by Amending Act, 1993 the proviso was added to clause (b) of Section (2). The said proviso reads as follows:-

> "Provided further that, any payment not exceeding fifty paise per ticket if charged by the proprietor towards service charges separately and the proprietor shows to the satisfaction of the prescribed officer as defined in the rules made under this Act that the amount of such service charges is spent by him towards maintenance and providing facilities and safety measures in the permanent cinemas in addition to those required under the provisions of the Bombay Cinemas (Regulation) Act, 1953 (Bom. XI of 1953), and the Maharashtra Cinemas (Regulation) Rules, 1966, or any other law for the time being in force, such service charges shall not be included in the payment for admission."

This proviso for the first time allowed the proprietors to collect 50 paise per ticket towards service charges over and above the fixed value of the ticket and the entertainment duty thereon. The amount of service charges was free of any entertainment duty or taxes and it was expected to be used for the purpose of maintenance and providing facilities and safety measures

in the permanent cinema theatres.

7. This proviso was amended by Bombay Entertainment Duty (Amendment) Ordinance, 1994 promulgated on 26th September, 1994 and the said Ordinance was replaced by the Bombay Entertainment Duty (Amendment) Act, 1994. The effect to this amendment was given from 16th September, 1994. By the said amendment the amount of service charge was increased from 50 paise to Rupee 1.00 per ticket. This service charge was made applicable to quasi permanent cinemas also, while earlier this service charge was made applicable to permanent cinemas. By section 2 Sub-section (3) of the Amending Act, 1994 after the second proviso to clause (b) of Section 2 of the Principal Act following proviso was added.

> "Provided also that the proprietor shall submit, every year, to the prescribed officer as defined in the rules made under this Act, the accounts of service charges collected and spent by him towards maintenance and providing facilities and safety measures as referred to in the second proviso. If the prescribed officer on perusal of the accounts is satisfied that the service charges or part thereof is not spent for the purposes mentioned in the second proviso, then the service charges or part thereof, not so spent shall be included in the payment for admission; and thereupon the provisions of sub-sections (2) to (5) of Section 4B shall *mutatis mutandis,* apply for the purpose of assessment of entertainment duty."

In view of this new proviso, it becomes necessary for the proprietor of the cinema theatre to submit account of service charges collected and spent by him towards maintenance etc. every year and if the prescribed officer found that the amount of service charges or part thereof was not spent for the purposes for which it was collected, the unspent amount of service charges was to be added in the payment for admission i.e. the fixed value of the tickets and would be liable for assessment of entertainment duty. There was no provision in the Amending Act, 1993 that the amount of the service charges collected and spent should be submitted every year.

8. It is contended on behalf of the petitioner that even though, the proviso added by the Amending Act of 1994, provided that the account of service charges collected and spent be submitted every year, it did not state in so many words, that the amount of service charges collected during the particular year has to be spent during the same year and not in any subsequent year. On 21st March, 1995 the Government of Maharashtra, Revenue and Forest Department issued a

Circular No. ENT 1095/PK28/T-1. In para 7 of the said circular the Government clarified as under:-

> "Whatever amount is collected on account of service tax in the particular year that amount should be required to be spent in the said year and same shall not be allowed to be spent in the next year. This matter shall be brought to notice of every body."

It appears that by letter dated 18/4/1995 issued by the Collector, Sangli, these provisions were brought to the notice of the petitioner. It is further contended that the date of the letter, being 18/4/1995, is relevant because the effect of the Government Circular was brought to the notice of the petitioner during the financial year 1995-96 and not before the end of financial year 1994-95, though the Government Circular itself was issued on 21st March, 1995.

9. According to the petitioner as in the Amending Act,1993 which came into force on 25th December,1992, there was no provision that the amount of service charges should be spent during the same year nor it was clearly provided in the Amending Act,1994, though it was sought to be clarified by the Circular dated 21st March,

1995, brought to his notice by the Collector as per letter dated 18/6/1995. According to him, during the financial years 1992-93, 1993-94 and 1994-95, he had collected total amount of Rs.4,58,366.50 towards service charges and he had also spent an mount of Rs. 1,94,483.45 towards maintenance of the cinema theatre. He intended to spent the said amount for the purposes of installation of Dolby Sound System. However, as per the estimate received by him, costs of Dolby sound system was Rs. 11,50,000/- and the balance amount of service charges was not sufficient to meet the expenses required for Dolby Sound System. Therefore, he intended to install the Dolby Sound System after sufficient amount of service charges was accumulated. According to the learned Counsel for the petitioner, it would be difficult for the Management of the Cinema Theatre to spend the exact amount of service charges for maintenance or facilities or safety measures during the same year because certain facilities for installation would require an amount much more than the service charges collected during one year. Taking into consideration this difficulty, the Government of Maharashtra made further amendment in the Principal Act, by Bombay Entertainment Duty (Amendment) Act, 1998,

which came into force on 1st May, 1998. By this amendment the proprietor was allowed to carry forward unspent amount of service charges for two financial years immediately following the financial year in which the amount had remained unspent and if the said amount could not be spent even during the next two financial years, then only it would be added in the payment of admission and would be assessed for entertainment duty. However, as the Amending Act, 1998 came into force from 1st May, 1998, naturally the petitioner cannot take benefit of the same. The case of the petitioner will have to be decided on the basis of the legal provision as standing during the financial years 1992-93, 1993-94 and 1994-95.

10. As pointed out earlier in the Amending Act, 1993 which came into force on 25th December, 1992, there was no provision that the amount of service charges should be spent during the same year nor there was any provision for submission of any accounts of the collection and expenses of service charges. In the Amending Act of 1994 for the first time, the provision was made for submission of accounts of service charges collected and spent every year and also to add unspent

amount in the payment of admission for the purpose of entertainment duty during the same year. It was made clear that the amount should be spent during the same year and not thereafter by the Circular dated 21st March, 1995, which was brought to the notice of the petitioner by the Collector, as per letter dated 18th April, 1995. If the third proviso to clause (b) of Section 2 added by the Amending Act, 1994 is read carefully, it indicates that the proprietor shall submit every year to the prescribed officer the account of service charges collected and spent and if the prescribed officer on perusal of the account is satisfied that whole or the part of the service charges is not spent for the purposes for which it was collected, the unspent amount of the service charges shall be included in the payment of admission and was subject to assessment of entertainment duty. It shows that the statement shall be year to year and if during the particular year the amount of service charges was not spent for which it was collected, the unspent amount should be added to payment of admission or the fixed amount of ticket and it will be subject to assessment of entertainment duty. It does not show that the amount should be spent during the subsequent years. As the

amendment came into force on 16th September, 1994 the petitioner cannot plead ignorance of the same nor it can be accepted that it would come into force only after it was brought to his notice by the Collector as per letter dated 18.4.1995. From 16.9.1994 only the modified rates of entertainment duty would be applicable. However, as far as the above referred third proviso to Section 2 clause (b) introduced by the Amending Act, 1994 is concerned, it would be applicable to total amount of service charges collected during the financial year, because there was sufficient time till 31st March, 1995 to spend that money and to submit account of collection and expenditure. However, as it has no retrospective effect prior to 16th September, 1994, this provision would not be applicable to the service charges collected during the financial years 1992-93 and 1993-94.

11 In view of the facts and legal position discussed above, it is clear that the Amending Act, 1993 which came in to force on 25th December, 1992, there was no provision that the amount of service charges should be spent during the same year and that unspent amount would be subject to assessment of entertainment duty. The third proviso to Section 2 clause (b) added by the

Amending Act, 1994 should be applicable to the financial year 1994-1995 and not the earlier years. Therefore, even the unspent amount of service charges collected during the financial year 1992-1993 and 1993-94 could not be subject to assessment of entertainment duty. In view of this, the order passed by the Collector to the extent of financial years 1992-1993 and 1993-94 has to be set aside but the order to the extent of unspent amount of service charges collected during the financial year 1994-1995 cannot be disturbed. It is pointed out that the Accountant General also found that the petitioner was liable to pay amount of Rs. 1,20,035/- and not Rs. 2,12,794/- as directed by the Collector and the said amount of Rs. 1,20,035/- is already paid by the petitioner, though under protest. The said amount may be adjusted towards the entertainment duty which may be found to be unspent amount of the service charges collected during the financial year 1994-95.

12. For the aforesaid reasons, the petition is partly allowed. The impugned order passed by the Collector to the extent of direction to pay entertainment duty on the unspent amount of service charges collected during the year 1992-93 and 1993-94 is

hereby set aside. The amount of Rs. 1,20,035/- already deposited by the petitioner may be adjusted towards the entertainment duty on the unspent amount of service charges collected during the year 1994-95. If the entertainment duty on the said amount is found less than the amount deposited, the excess amount shall be refunded to him within 6 weeks.

13. It may be pointed out here that by the order dated 10/9/1999, this Court had granted interim relief against suspension of licence subject to petitioner's giving Bank Guarantee. Admittedly, the Bank Guarantee was furnished by the petitioner within three weeks, as per the said order. In spite of that, the licence was cancelled by the Collector on the ground that he had not made the payment of entertainment duty as assessed by him. This was not only clear violation of the order of this Court but it also caused loss of business to the petitioner and loss of revenue to the State due to the closure of Cinema Theatre for such a long period. The Divisional Commissioner, Pune shall fix the responsibility of the concerned officer and take appropriate action against him and submit a report to this Court about the same.

14. Writ petition is disposed off and Rule is made absolute accordingly.

(J.H. BHATIA, J.) **(B.H. MARLAPALLE, J.)**